

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

ELLIS TAYLOR, JR.

CIVIL ACTION NO. 04-2227

-vs-

JUDGE LITTLE

**JO ANNE BARNHART,
COMMISSIONER OF SOCIAL SECURITY**

JUDGMENT

Before the court is a report and recommendation of the magistrate suggesting that the final decision of Jo Anne Barnhart, Commissioner of Social Security (“Commissioner”), be reversed and vacated, that appellant, Ellis Taylor, Jr. (“Taylor”), be awarded supplemental security income (SSI) from the protective filing date of July 2, 2002, and that this case be remanded to the Commissioner for a calculation of his benefits from that date. The Commissioner has not filed a timely objection to the magistrate’s report.¹ After review, this court adopts the reasoning and conclusions of the magistrate.

This court agrees with the magistrate that the deciding issue here is whether the ALJ could choose not to give controlling weight to the opinion of Taylor’s treating physician, Dr. Wheat. The Fifth Circuit in Myers v. Apfel discussed the requirements for determining how much weight to accord a treating physician’s opinions. 238 F.3d 617, 621 (5th Cir. 2001).

¹ If there are no specific objections to the magistrate’s report and recommendation, the district court is to review it for findings and conclusions that are either clearly erroneous or contrary to law. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989); 28 U.S.C. § 636(b)(1) (2005); LR 74.1W(B) (2005).

While there are situations in which these opinions can be given little or even no weight, this court agrees with the magistrate that the circumstances here indicate that the opinion of Dr. Wheat should have been given controlling weight. As such, the requirements for Listing 12.04 were met.

Accordingly, Taylor's appeal of the denial of his application for SSI benefits under 42 U.S.C. § 1381a is GRANTED. Therefore, the final decision of the Commissioner is REVERSED and VACATED and Taylor is awarded benefits from the protective filing date of July 2, 2002. This case is REMANDED to the Commissioner for a calculation of Taylor's benefits from that date.

Alexandria, Louisiana

13 September 2005

A handwritten signature in black ink, appearing to read "F. A. Little, Jr."

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE